

STEPHEN C. RITCHIE

IBLA 83-561

Decided May 31, 1984

Appeal from decision of Montana State Office, Bureau of Land Management, dismissing a protest to the rescission of a request for submission of noncompetitive oil and gas lease offer, M-49589.

Affirmed.

1. Notice: Constructive Notice -- Oil and Gas Leases: Applications:
Filing -- Oil and Gas Leases: Rentals

Where BLM mails a notice to a first-drawn applicant in a simultaneous oil and gas lease drawing requiring the applicant to submit a lease offer and tender the first year's rental in accordance with 43 CFR 3112.4-1(a), the applicant will be deemed to have received the notice if it was sent to the applicant's last address of record, regardless of whether it was in fact received by him. However, when a letter is returned to BLM as undeliverable, BLM should examine the case record to see if it contains an updated address. If an updated address would be found upon proper examination, the notice must be sent to the new address to effect service.

APPEARANCES: W. Audie Long, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Stephen C. Ritchie has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 22, 1983, dismissing his protest of the rescission of a request for submission of a noncompetitive oil and gas lease offer, M-49589.

In the November 1980 simultaneous oil and gas lease drawing, appellant's simultaneous oil and gas lease application was drawn with second priority for parcel MT-88. The application of R. G. Freeman was drawn with first priority. By notice dated September 10, 1982, 1/ BLM requested Freeman to submit

1/ Initially, we observe that there is some confusion in the record as to the date of the notice to Freeman and particularly when it was mailed. Copies of the notice in the case file are dated Oct. 10, 1982, with the exception of one copy in which October is crossed out and September written in. In its December 1982 decision rejecting Freeman's application, BLM states that he

executed lease offer forms (Form 3110-2 (Jan. 1978)) and the first year's advance rental payment "within 30 days from receipt of this notice." On October 12, 1982, BLM received its September 1982 notice marked "Not

Deliverable as Addressed, Unable to Forward." Also on that date, BLM received a notification of a change in Freeman's address dated October 7, 1982.

By decision dated December 2, 1982, BLM rejected Freeman's simultaneous oil and gas lease application because he had failed to submit executed lease offer forms and the first year's advance rental payment "within 30 days of receipt of our Notice," in accordance with 43 CFR 3112.4-1. BLM noted that Freeman had been "advised by certified mail dated September 10, 1982" of the regulatory requirement and that, under 43 CFR 1810.2(b), he was deemed "to have received the communication if delivery is attempted to his address of record, regardless of whether it was in fact received by him." This decision was mailed to Freeman's old address and was returned to BLM on December 20, 1982, by the Postal Service. BLM considered the decision final and marked the case closed February 2, 1983. 2/

By notice dated February 10, 1983, BLM requested appellant to submit executed lease offer forms and the first year's advance rental payment with respect to parcel MT-88. On February 22, 1983, BLM received the required documents. By notice dated March 3, 1983, BLM rescinded its February 1983 notice to appellant, stating:

It was discovered, after your Notice was mailed on February 10, 1983, that a change of address had been submitted for Mr. Freeman and was received by this office on October 12, 1982, two days after the Notice was mailed to him requiring that he submit the signed lease forms and rental. The change of address notices are filed by our Docket Section; however, because of a backlog they did not file the notice until February 11, 1983. Since the address change was of record in this office at the time

was "advised by certified mail dated September 10, 1982." Moreover, the case file includes the envelope which contained the notice sent to Freeman. A notation on the return receipt card attached to the envelope indicates that it was mailed Sept. 10, 1982. In addition, it bears a label which states in part "Return to Sender," presumably affixed by the Postal Service. The label bears the date, Sept. 22, 1982, which supports the conclusion of an original mailing date prior thereto. Accordingly, we conclude that BLM mailed the notice to Freeman of the requirements under 43 CFR 3112.4-1(a) on Sept. 10, 1982, and not Oct. 10, 1982, as BLM maintained in its Mar. 3, 1983, notice to appellant and its Mar. 22, 1983, decision. 2/ Since no notice of appeal was filed by Freeman, the decision would be final pursuant to 43 CFR 4.411(b). Gary T. Suhrie, 75 IBLA 9 (1983). However, the decision was not addressed to Freeman at his new address, notice of which was mailed to and received by BLM on Oct. 12, 1982. Because he was not notified that his application was rejected, Freeman was effectively denied his right to appeal. Accordingly, in the absence of effective notice of the decision, the 30-day appeal period set forth in 43 CFR 4.411(a) has not run and the December 1982 decision cannot be considered final.

the envelope containing the notice was returned, it should have been remailed to Mr. Freeman's correct address of record.

On March 15, 1983, BLM received a telegram from appellant, protesting rescission of the February 1983 notice. Appellant noted that Freeman's change of address was received by BLM after mailing the notice to submit executed lease offer forms and the first year's advance rental payment. In its March 22, 1983, decision dismissing appellant's protest, BLM stated that it did not agree that "the rules regarding notice of change of address were not adhered to by Mr. Freeman" and reiterated its conclusion that when the notice to Freeman had been returned to BLM, it "would have been remailed." BLM further stated: "He [Freeman] had at the very least 30 days from the date the envelope was returned, also October 12, 1982, within which to return the advance rental and lease forms to this office."

In his statement of reasons for appeal, appellant contends that BLM was only required to mail the notice to Freeman at his last address of record and that it did so prior to receiving a change of address. Appellant also argues that by submitting reexecuted lease offer forms and the first year's advance rental payment, there was created a "contractual relationship" which required BLM to issue the lease to him.

The applicable regulation, 43 CFR 3112.4-1(a), provides that a lease agreement consisting of a lease form and stipulations, "shall be forwarded to the first-qualified applicant for signing, together with a request for payment of the first year's rental." Moreover, the regulation provides that: "The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice." Id. (emphasis added). Failure to submit timely the required documents, in accordance with 43 CFR 3112.4-1(a), properly results in rejection of a simultaneous oil and gas lease application, pursuant to 43 CFR 3112.6-1(d). Longhorn Oil, Ltd., 72 IBLA 45 (1983). Therefore, the first issue to be decided is the date of receipt of notice.

[1] Although Freeman never actually received the September 1982 notice, appellant contends that Freeman is chargeable with constructive receipt of the notice pursuant to Departmental regulation 43 CFR 1810.2(b) which provides as follows:

Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

When a letter is returned unclaimed or unforwardable, the date of receipt is ordinarily considered to be the date of return by the Postal Service of an undelivered certified letter to BLM. Michele M. Dawursk, 71 IBLA 343 (1983); see also 43 CFR 4.401(c)(3).

Nevertheless, appellant is not correct in contending that BLM's responsibility to notify Freeman ended when the notice was mailed to Freeman's last address of record. ^{3/} In Estate of Glenn F. Coy, 52 IBLA 182, 194, 88 I.D. 236, 242 (1981), aff'd sub nom. Weedon v. Watt, Civil Action Nos. 81-749, 81-984 (D.D.C. Oct. 9, 1981), rev'd on other grounds, No. 81-2286 (D.C. Cir. Nov. 22, 1982), the Board held that when a letter is returned as undeliverable, BLM should examine the case record thoroughly to see if it contains an updated address. If an updated address would be found upon proper examination, the notice must be sent to the new address to effect service.

In the instant case, Freeman's new address was not added to the file until February. Nevertheless, it arrived at BLM's office at the same time as the return of the September 10 notice. The arrival of both documents placed two obligations on BLM: (1) to file the change of address in the lease file, and (2) to consult the file upon return of the notice to see if a change of address had been provided. These twin obligations should have been met with equal dispatch. Had BLM done so, it would have been aware of Freeman's new address and, therefore, would have been required to send the notice again. By failing to send another copy to the address which would have been discovered if BLM had properly examined the case record, BLM failed to serve the notice upon Freeman. Estate of Glenn F. Coy, supra. In view of the foregoing, it follows that BLM erred in issuing its decision of December 2, 1982, rejecting Freeman's application.

It is, however, necessary for us to address one aspect of Freeman's change of address. We note that Freeman's change of address was not filed by Freeman himself but by Fairway Exploration Company, Inc. (Fairway). Neither the letter notifying BLM of the change of address nor the case file reveal that Fairway and appellant are associated in any fashion. Recently, in Victor M. Onet, Jr., 81 IBLA 144 (1984), we noted: "[L]ogic dictates that notice of an address change must come from the applicant, or one serving as the applicant's duly authorized agent, to avoid potential abuse by third parties who might desire that the applicant not receive notice." Thus, under our holding in Onet it was improper for BLM to honor the change of address filed by Fairway which failed to indicate its relationship with Freeman since nothing in the case file indicated that Fairway was, in fact, an authorized agent of Freeman. However, because BLM's past practice relative to changing addresses of record has apparently been to act on such requests without determining whether the writer is authorized to represent the applicant, our ruling in Onet will apply prospectively. See, e.g., Carl Gerard, 70 IBLA 343 (1983).

^{3/} In a brief filed in response to appellant's statement of reasons at page 3, Freeman argues that he did all that was within his power to assure that the notice would reach his hands when he filed his change of address with BLM. We disagree, as we think it was his responsibility to also have filed a change of address with the Postal Service to ensure that any mail in transit would be delivered promptly.

In response to appellant's contention that he is entitled to noncompetitive oil and gas lease M-49529 by virtue of a "contractual relationship" with BLM, based presumably on his acceptance of BLM's offer, we only note that appellant has misconstrued the nature of the transaction. Departmental regulation 43 CFR 3112.4-1(a) states that: "Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." Acceptance of an applicant's offer does not occur until issuance of a lease bearing the signature of the authorized officer. See 43 CFR 3112.4-2. It is well established that an oil and gas lease offer does not create a property right in the offeror. Stanley Ustan, 71 IBLA 116 (1983), and cases cited therein.

Accordingly, in the absence of any valid reason for rejecting Freeman's application and because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, 30 U.S.C. § 226 (1982), we conclude that BLM properly dismissed appellant's protest of the rescission of the February 1983 notice sent to him pursuant to 43 CFR 3112.4-1(a). Appropriate notice should be directed to Freeman at his current address of record, in order to afford him the opportunity to submit a lease offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge

